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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.P. et al., Persons  
Coming Under the Juvenile  
Court Law.

B292462  
(Los Angeles County  
Super. Ct. No. DK21507A, B)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County  
of Los Angeles, Nancy Ramirez, Judge. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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## I. INTRODUCTION

The juvenile court sustained against J.S. (mother) a Welfare and Institutions Code section 300<sup>1</sup> petition under subdivisions (b) and (j), finding that mother's physical abuse of her daughter N.P. placed N.P. and her younger brother, A.S., at risk of serious physical harm.

On appeal, mother contends that the juvenile court erred in sustaining the petition under section 300, subdivision (b) because it failed to employ the three-part test adopted by the court in *In re D.M.* (2015) 242 Cal.App.4th 634 (*D.M.*) for determining whether parental discipline is excessive or subject to the so-called parental disciplinary privilege. She also contends there was insufficient evidence to support the juvenile court's jurisdictional findings under subdivision (b), arguing that her past physical discipline of N.P. did not cause the child serious physical harm and did not place N.P. or A.S. at risk of future serious physical harm. And, mother argues that, if the findings under subdivision (b) are reversed, the derivative finding as to A.S. under subdivision (j) must also be reversed. We affirm.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## II. BACKGROUND

### A. *Nondetention Report*

Mother's family came to the attention of the the Los Angeles County Department of Children and Family Services (the Department) on August 19, 2016, when it received a hotline call reporting that mother brought her 10-month-old son, A.S., to the emergency room at 10:00 p.m. the previous night because he had swelling to the left side of his head. He was diagnosed with a skull fracture. Mother "did not know how [the injury] happened." In response to the report, two social workers went to the family home to interview mother and her oldest son, 16-year-old T.S.

A social worker asked mother how she disciplined her children, and mother replied that she would take away their phone or television privileges. Mother also admitted that she had spanked N.P. (who was then nine years old) with "an open hand to her bottom," but not within the last year. She denied, however, using any other forms of physical discipline on her children or leaving bruising or marks on them.

Social workers also interviewed N.P., who reported that mother yelled and cursed at A.S. and that mother and T.S. would yell at her if she told J.P. (father) about "concerns regarding her home environment." N.P. also confirmed that mother "spank[ed] her on the butt with an open hand" and added that mother had hit her with a wooden spoon in the past as well.

On September 20, 2016, the Department received a child abuse hotline telephone call, reporting that mother had slapped N.P.'s face while brushing her hair that morning and otherwise abused N.P. by slapping her in the face "often" and hitting her

“hard” with a belt, leaving bruises. A social worker interviewed N.P. again and during the second interview, N.P. stated that mother pulled her hair after N.P. complained that mother’s brushing hurt her, and that mother hit her when she misbehaved at school, but added that “she [had not] hit[] [her] in a long time.” When asked when mother last hit her in the face, N.P. replied “2 or 3 weeks [ago].” N.P. denied that mother’s discipline left marks, but conceded that, prior to the commencement of therapy with mother two or three months earlier, mother would hit “her with a belt.” When the social worker informed N.P. that she intended to speak to mother about her physical discipline, N.P. protested that mother “hasn’t done it in a long time” and recanted most of her previous statements about mother’s discipline.

On October 4, 2016, mother denied all allegations of abuse, but admitted that she had “popped [N.P.] in the mouth with her open hand and told her . . . not to talk back to her” during a recent hair-brushing incident. She specifically denied “ever slapping any of her children” or using a belt on N.P. “in a long time.” N.P. confirmed that mother had recently “popped her in the mouth” when she “back talked [while mother] was doing her hair.” She also denied that mother had used a belt on her in the last three or four years.

*B. Section 300 Petition and Detention Hearing*

On March 1, 2017, the Department filed a section 300 petition alleging in count a-1 as follows: “The [children, N.P. and A.S., have] suffered, or there is a substantial risk that [they] will suffer, serious physical harm inflicted nonaccidentally upon

[them] by [their] parent or guardian. [¶] On prior occasions . . . [the children's] mother[] physically abused [N.P.,] by striking [her] with belts. On prior occasions, . . . mother struck [N.P.'s] face with [her] hand. On a prior occasion in September 2016, . . . mother pulled [N.P.'s] hair, causing pain to [her] head. On a prior occasion, . . . mother struck [N.P.] with a wooden spoon. Such . . . abuse was excessive and caused [N.P.] unreasonable pain and suffering. The . . . abuse of [N.P.] by . . . mother endangers [N.P.'s] physical health and safety and places [N.P.] and [N.P.'s] sibling, [A.S.,] at risk of serious physical harm, damage and physical abuse.”

In count b-1, the Department alleged: “[N.P. and A.S. have] suffered, or there is a substantial risk that [they] will suffer, serious physical harm or illness [¶] as a result of the failure or inability of [their] parent or legal guardian to supervise or protect [them] adequately.” Count b-1 was supported by the identical facts alleged in support of count a-1.

In count j-1, naming A.S. only, the Department alleged: “[A.S.'s] sibling has been abused or neglected, as defined in [section 300,] subdivision[s] (a), (b), (d), (e), or (i), and there is a substantial risk that [A.S.] will be abused or neglected, as defined in those subdivisions.” Count j-1 was also supported by the identical facts alleged in support of count a-1.

At the March 1, 2017, detention hearing, the juvenile court found that the Department had made a prima facie showing that the children were persons described in section 300, subdivisions (a), (b), and (j). The court ordered that the children were to

remain placed pursuant to a family law custody order,<sup>2</sup> with N.P. in the primary custody of father and weekend visitation by mother.

C. *Jurisdiction/Disposition and Last Minute Information Reports*

On March 30, 2017, the Department filed a jurisdiction/disposition report that described the current allegations. In an April 13, 2017, last minute information report, a social worker reported that she interviewed N.P. on April 8, 2017, at mother's home during one of [N.P.'s] weekend visits there. Concerning the allegation of mother's physical abuse, N.P. explained that mother would spank her when she misbehaved. N.P. admitted that she "talk[ed] back a lot," causing mother to "hit her on the butt with her pants still up . . . ." N.P. confirmed that mother would also hit her with a belt and wooden spoon. According to N.P., she "never had . . . bruising but . . . she would get marks on her bottom that would go away after a few minutes." Mother, however, never drew blood or caused "open wound type injuries." But N.P. would experience "stinging pain from the spankings that . . . lasted 15 minutes or so . . . ."

During the following year, the Department submitted various last minute information reports to the juvenile court, with updates on the family's progress. The court continued the jurisdiction/disposition hearing during that time, based on the additional information in the reports.

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<sup>2</sup> In January 2017, a social worker reported that, pursuant to a family law order, N.P. had been removed from mother's home and placed in father's custody.

On May 10, 2018, N.P.'s therapist gave a report to the Department for submission to the juvenile court. According to the therapist, N.P. was "very angry and defiant" when she first began therapy. N.P. advised the therapist that mother made her lie to social workers "about any abuse that had taken place." N.P. feared mother "because she would be slapped or [suffer] some sort of physical abuse if she kept talking about what happened to her [in the past]." <sup>3</sup>

D. *Jurisdiction/Disposition Hearing*

On August 21, 2018, the juvenile court held a jurisdiction/disposition hearing. During the jurisdiction phase of the hearing, N.P. testified in chambers as follows: N.P. was 11 years old and in the seventh grade. She lived with father, his girlfriend, and the girlfriend's daughter. She last lived with mother approximately a year ago. When N.P. lived with mother, T.S., A.S., and mother's brother also lived there.

N.P. confirmed what she had told a social worker: when she "got in trouble," mother "hit [her] with a belt a few times." On the occasions when mother would hit N.P. with the belt, she would hit her multiple times. The belt would leave "little red marks" that sometimes lasted "a long time" and cause her to cry.

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<sup>3</sup> N.P. told the therapist that her brother's friend sexually abused her when she was six years old and that he tried to abuse her again when she was eight, "but she kicked him in the neck and got away." N.P. also reported that her brother T.S. had "sexually molest[ed] her by touching her private parts inappropriately off and on from age [six to] approximately age 10." In addition, T.S. "was always trying to watch her in the shower."

Mother would also slap N.P. in the mouth, leaving “red marks sometimes” that lasted “probably an hour or so.”

N.P. further confirmed that, at least “a few times,” mother hit her with a “big” wooden spoon. On the occasions when mother would hit her with a spoon, she would hit her more than twice. Mother’s discipline with the spoon would leave a mark on N.P.’s upper thigh and cause her to cry.

N.P. also reiterated that, on at least one occasion when N.P. was in sixth grade, mother “was doing [her] hair . . . and . . . got frustrated . . . [and] would just yank it.” N.P. believed mother “knew . . . she was hurting her.” According to N.P., sometimes mother was abusive while brushing her hair and “sometimes she wasn’t.”

N.P. explained that when she broke mother’s rules, she “[e]ither got hit or [she] just went to the corner.” Before N.P. began therapy, mother would also “throw stuff at [her] that she [had] in her hand.” Mother began using nonphysical punishment after N.P. started therapy. Mother would sometimes tell N.P. not to tell her therapist or social workers about certain things.

N.P. saw mother hit A.S., sometimes “popping him in the mouth for crying, or sometimes hit[ting] him on the butt when he [was] crying.” Mother hit A.S. “almost every day or two.”

Following the arguments of counsel on jurisdiction, the juvenile court ruled as follows: “So I want to begin by stating that I find that [N.P.’s] testimony today to be credible and to be consistent with her statements in the various reports. She is consistent in stating that her mother hit her with a belt and with a wooden spoon, and the court is going to sustain [the] allegations [in counts b-1] and [j-1]. [¶] However, with regard to [count a-1], the court finds Department has not met its burden by a



preponderance of the evidence that the children suffered serious physical harm, so the court is dismissing without prejudice [count a-1], and finds that based on [N.P.’s] testimony and the reports that [mother] did physically abuse her with belts, with her hand on her face, pulling her hair and causing her pain, and hitting her with a wooden spoon, and that this does put [A.S.] at risk, in particular, given [N.P.’s] statements that [mother] has been popping [A.S.] in the mouth, and [A.S.] is only two years old. [¶] So with regard to the court’s findings today, the court has read and considered the evidence, the testimony and the arguments and finds by a preponderance of the evidence that counts [b-1] and [j-1] of the petition are true as alleged and finds the children to be persons described by . . . section 300.”

### III. DISCUSSION

#### A. *Standard of Review*

Mother’s challenge to the juvenile court’s jurisdictional findings based on its failure to follow and apply the three-part test in *D.M.*, *supra*, 242 Cal.App.4th 634, appears to be a claim of legal error that we review de novo. (*In re A.L.* (2010) 190 Cal.App.4th 75, 78 [“Questions of law that do not involve resolution of disputed facts are subject to de novo review, giving no deference to the superior court’s ruling”].)

Mother’s challenge to the sufficiency of the evidence in support of the juvenile court’s jurisdictional findings is reviewed under the substantial evidence standard. (*In re R.T.* (2017) 3 Cal.5th 622, 633.) “In making this determination, we draw all reasonable inferences from the evidence to support the findings

and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' [Citations.]" (*Ibid.*)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re I.J.* (2013) 56 Cal.4th 766, 773.) When exercising jurisdiction over A.S., the court sustained both count b-1 and count j-1. We affirm count b-1 as to N.P. and focus our discussion on count j-1 as to A.S.

B. *Juvenile Court Did Not Err in Exercising Jurisdiction Over N.P.*

A juvenile court may determine that a child is subject to the court's jurisdiction under section 300, subdivision (b)(1) if it finds by a preponderance of the evidence that "[t]he child has suffered or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).)

Although section 300 does not define "serious physical harm" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 139), it provides that "[f]or purposes of [section 300, subdivision (a)], 'serious physical harm' does not include reasonable and age appropriate spanking to the buttocks if there is no evidence of serious physical injury." (§ 300, subd. (a).) Moreover, section 300

expresses “the intent of the Legislature that this section not . . . prohibit the use of reasonable methods of parental discipline.” (§ 300.)

The court in *D.M.*, *supra*, 242 Cal.App.4th 634, considered whether a mother who, on “rare” occasions, spanked her children on the buttocks with her hand or a sandal, but never hard enough to leave bruises or a mark, had inflicted “serious physical harm” upon her children under section 300, subdivisions (a), (b), and (j). (*Id.* at pp. 637, 640.) In making its determination, the court looked to the right of parents to discipline their children, “which exists elsewhere in California civil and criminal law,” and adopted “for section 300 the same three-part definition of ‘reasonable’ parental discipline that courts have been consistently applying for decades in every other context in which it arises.” (*Id.* at pp. 637, 642.) According to the court in *D.M.*, “[w]hether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of this parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive.’ [Citations.]” (*Id.* at p. 641.)

Mother argues that the juvenile court did not apply the three-part test adopted in *D.M.*, *supra*, 242 Cal.App.4th 634, and we must therefore reverse the jurisdictional findings and remand for a new hearing. We disagree. Contrary to mother’s argument, even if the juvenile court failed to expressly analyze the three factors described in *D.M.*, we could affirm based upon a finding of substantial evidence. (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1166 [“Where the statute does not mandate explicit

findings, and where substantial evidence supports the juvenile court's order, findings may be implied"]; *In re Steve W.* (1990) 217 Cal.App.3d 10, 27; but see *D.M.*, *supra*, 242 Cal.App.4th at p. 643 [declining to engage in substantial evidence review because juvenile court applied incorrect legal standard].)

We will assume for purposes of argument that the juvenile court erred in failing to analyze the three factors described in *D.M.*, but nevertheless affirm because any error was harmless. (*In re J.P.* (2017) 15 Cal.App.5th 789, 797-798 [the harmless error standard applies in dependency proceedings and permits reversal only if the reviewing court finds it reasonably probable the result would have been more favorable to the appealing party but for the error].) Here, there was overwhelming evidence that mother's physical discipline of N.P., even if "genuinely disciplinary" and "warranted under the circumstance," was excessive under the third-prong of the *D.M.* test. N.P., whose testimony the juvenile court found credible, testified that, when mother used a belt to discipline her, she would hit N.P. "multiple" times during a single disciplinary episode, leaving marks and causing stinging pain that lasted "15 minutes or so" and made her cry. Similarly, on those occasions when mother used a spoon to discipline N.P., she would hit the child "more than twice," leaving marks and making her cry. And, when mother slapped N.P. in the face—which N.P. reported happened "often"—she would leave a red mark that sometimes lasted "an hour or so." N.P.'s testimony described physical discipline with the hand and other implements that occurred on more than a "rare occasion" and supported an inference under subdivision (b) that N.P. was at risk of future serious physical harm.

In addition, and as noted by the juvenile court, mother sometimes denied that she physically disciplined N.P. or otherwise minimized the frequency and severity of the discipline she admitted. Further, according to N.P., mother advised N.P. not to tell social workers about mother's discipline of her. Mother's denials in the face of credible evidence to the contrary, her refusal to accept responsibility for her conduct, and her attempts to conceal that conduct from social workers supported an inference that mother knew her physical discipline of N.P. was unreasonable and excessive.

Given the strength of the evidence, particularly in light of the trial court's express credibility determinations, we conclude that, even if the juvenile court had expressly followed and applied the three-part test announced in *D.M.*, *supra*, 242 Cal.App.4th 634 for evaluating the reasonableness of parental discipline, there was no reasonable probability that mother would have received a more favorable outcome on the jurisdictional findings under subdivision (b), as the amount of past physical discipline of N.P. was clearly excessive under the third prong of the *D.M.* test and therefore posed a future risk of serious harm to N.P.

Mother argues, in the alternative, that even if the juvenile court did not err as claimed, there was insufficient evidence to support the juvenile court's findings under subdivision (b) that N.P. was at risk of future physical harm. But, as explained above, the evidence of mother's striking of N.P. was not only sufficient to support those findings, it was overwhelming. N.P. credibly described—and mother consistently denied—a course of conduct by mother that was excessive and well beyond the amount of discipline that could be considered reasonable.

C. *Juvenile Court Did Not Err in Exercising Jurisdiction Over A.S.*

Under section 300, subdivision (j), a child is within the jurisdiction of the juvenile court if (1) the child's sibling has been abused or neglected and (2) there is a substantial risk that the child will be abused or neglected. Subdivision (j) allows a juvenile court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of the other subdivisions. (*In re I.J.* (2013) 56 Cal.4th 766, 774.)

Mother's challenge to the juvenile court's exercise of jurisdiction pursuant to section 300, subdivision (j) is expressly predicated on her unsuccessful assertion that the court's subdivision (b) findings must be reversed. We therefore conclude that the court's amply supported findings under subdivision (b) also supported its exercise of jurisdiction over A.S. under subdivision (j).

#### **IV. DISPOSITION**

The jurisdictional findings are affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.